service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

(7) According to the learned counsel the Board was bound to provide avenues of promotion to the cadre of Mandi Supervisor-cum-Fee Collectors. Its failure to do so, according to the learned counsel, is not only violative of the guarantee enshrined in Articles 14 and 16 of the Constitution of India, but is also against the dictum of law as laid down by their Lordships of the Supreme Court.

(8) A perusal of the rules shows that persons working as Mandi Supervisors-cum-Fee Collectors are eligible for promotion to the posts of Assistant Secretaries. They are, however, required to possess the qualifications prescribed in the rules. Such persons, like the petitioners, as do not possess the requisite qualifications, cannot be heard to say that no avenue of promotion has been provided. It is open to an employer to prescribe qualifications, which have a reasonable nexus with the requirements of the post. It has not been even suggested that the qualifications prescribed have no nexus with the job requirement. Consequently, the very basis for the submission is non-existent. The avenues of promotion factually exist. The petitioners, who do not possess the qualifications prescribed under the rules, are ineligible for promotion. In my view, the observations of their Lordships of the Supreme Court cannot be interpreted to mean that avenues of promotion have to be provided to every employee irrespective of the fact as to whether or not he is qualified for the post. The contention is accordingly rejected.

(9) The writ petition is accordingly accepted to the extent indicated above. It is directed that respondent No. 2 shall consider the claims of the petitioners for promotion to the post of Assistant Secretary in accordance with the resolution dated August 13, 1974. In the circumstances of the case, the parties are left to bear their own costs.

J.S.T.

Before Hon'ble V. K. Bali, J.

GURAN DITTA,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER (REVENUE) AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 5613 *of* 1983

December 13, 1991

Code of Civil Procedure, 1908—*S.* 11—Res judicata—*Applicability*—*Land alloted to displaced persons*—Suo motu *reference by Assistant*

Commissioner to State—Allotment cancelled by State authority—Writ by allottee challenging jurisdiction of carrying out reference—On question of cancellation no finding by High Court—Order of High Court cannot act as res judicata *in any subsequent proceedings against cancellation of allotment—Plea of* res judicata *not tenable.*

Held, that it is settled proposition of law that observations made by the Court when there is neither any pleading nor evidence has to be termed off the mark. Such an observation would be unnecessary and would not operate as *res judicata.* As referred to above, the Division Bench of this Court proceeded on the facts as were available on the records stemming from the *suo motu* reference itself.A conclusion without reference to relevant provisions of law is weaker than even casual observation. To have a binding effect, be it a question of law or fact, there has necessarily to be an issue pertinently raised and adjudicated upon. The Supreme Court in *State of U.P. and another* v. *M/s Synthetics and Chemicals Ltd. and anothers,* Judgements Today 1991 (3) Supreme Court 268 has held that a conclusion without reference to relevant provision of law is weaker than even casual observation. When the questions which were neither in issue nor were raised nor was there any discussion in the judgement, the same would not have any binding effect.

(Para 6)

Displaced Persons (Compensation & Rehabilitation) Act, 1954—*S.* 19—*Rule* 67*A—Allotment of Land—Whether Verified claim a condition precedent—Land can be allotted on basis of* jamabandis—*Existence of verified claim not* sine qua *non for such allotment.*

Held, that a displaced persons is entitled to allotment of land abandoned by him in lieu of the land left behind in Pakistan on the basis of entries in "*Jamabandis*" received from Pakistan and the existence of verified claim is not a *sine qua* non for such allotment.

(Para 8)

N. B. S. Gujral, Advocate with Ms. Madhu Khanna, Ms. Harmeet Kaur and Manjeet Singh, Advocate, *for the Petitioners.*

Iqbal Singh, Advocate, for A.G. Punjab, *for the Respondent.*

JUDGMENT

V. K. Bali, J.

(1) The chequered history of this case originates from historic partition of the country way back in the year 1947. Petitioner realised his right of allotment of the land that he was entitled to on account of land abandoned by his father in the area now forming Part of West Pakistan in 1970 and ever since than he is in persuit of his goal.

The tenacity of the petitioner to fight out a long drawn legal battle has landed him in this Court through a petition filed by him away back in the year 1983 under Articles 226/227 of the Constitution of India for setting aside the order dated June 9, 1983 passed by Financial Commissioner Revenue and Secretary to Government Punjab, Rehabilitation Department with delegated powers of the Central Government under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter to be referred as the Act of 1954). The facts culminating into this petition need a necessary reference.

(2) Father of petitioner Daulat Ram son of Nihaloo was a displaced person from West Pakistan where he owned land in village Garmula, Hadbast No. 42, Tehsil Sakargarh District Sialkot. It is not known as to whether at the eve of partition or thereafter but the fact remains that Daulat Ram died leaving behind his only son who is none other than the petitioner. In lieu of the land compulsorily abandoned by Daulat Ram in Pakistan, he was allotted 3-11½ standard acres in village Jandi, Tehsil and District Gurdaspur under the general allotment scheme which was said to have been cancelled presumably for not taking possession although the positive case of petitioner is that no orders of cancellation were ever passed nor the same were available with the department. Coming to know of the allotment so made, petitioner addressed an application to the Assistant Registrar-cum-Managing Officer, Rehabilitation Department, Jalandhar that in case the land allotted to his father in village Jandi in District Gurdaspur in lieu of the land left by him in West Pakistan has since been cancelled he be provided fresh allotment in district Ludhiana for the reason that he was the sole legal heir of allottee Daulat Ram. Inasmuch as he was not sure as to whether the land allotted to his father in village Jandi had since been cancelled, he also addressed an application dated June 28, 1970 to the Tehsildar (Sales) requesting for spot verification. The revenue Patwari was deputed to do the job who gave his report on July 5, 1970 which was produced before the Managing Officer on July 8, 1970. The revenue Patwari had reported that according to the entries in the Jamabandi of the said village, no allotment in the name of Daulat Ram was existing at the spot. However, the Managing Officer proceeded with the application of the petitioner and found that Daulat Ram was actually entitled to get an allotment of 3-11¼ Standard Acres of land in lieu of land left by him in Pakistan but the application of the petitioner was rejected on the sole ground that neither any claim petition (Mutalba Arazi) had been filed by Daulat Ram as was required under the provisions of East Punjab Refugees Registration of Land (Claims) Act, 1948 nor

was any application made within the date prescribed under Rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules 1956 (hereinafter to be referred as the Rules of 1956). This order was passed on July 25, 1970 and it also contained a finding to the effect that an application under Rule 67-A of the Rules of 1956 had to be filed before December 31, 1963. Obviously, the petitioner was not satisfied with the ground on which his application had been rejected and, therefore, carried an appeal before the Authorised Settlement Commissioner against the order dated July 25, 1970. The authority concerned came to the conclusion that no order was passed with regard to cancellation of earlier allotment and that being so, petitioner was entitled to get the said land restored to him. Further, the view of the said authority was that where no order with regard to cancellation was passed, rule 67-A would not come in the way of allotment and the limit for making the requisite application was also not attracted. The appeal was, thus, allowed and the case was remanded for fresh decision after deciding whether the petitioner is actually the legal heir of Shri Daulat Ram or not. The Assistant Registrar-cum-Managing Officer to whom the case was remanded for decision returned a positive finding in favour of the petitioner by holding that he was a genuine legal heir of Daulat Ram. Inasmuch as the entitlement of petitioner was confirmed by the Appellate Authority, the Assistant Registrar-cum-Managing Officer allotted land to the petitioner to the extent of 3—11¼ standard acres, in village Jandi. Although satisfied on the count that he was allotted land, yet unsatisfied on the count that he was allotted land in village Jandi whereas all his relatives were settled at Nawan Shehar, petitioner was constrained to file yet another appeal before the Claim Officer exercising the powers of Authorised Settlement Commissioner. The only prayer was for allotment of land in Tehsil Nawan Shehar. Considering some difficulties faced by the petitioner, the Appellate Authority accepted the prayer of the petitioner directing the authorities concerned to give land to him in Tehsil Nawan Shehar. Goshwara of land was given for allotment in Tehsil Nawan Shehar and registered notice was issued to the petitioner on February 18, 1971 to appear before the Managing Officer on March 9, 1971 to exercise his option of allotment. The petitioner exercised his option for allotment of land in village Rahon and—*vide* orders dated March 25, 1971 the Managing Officer directed the allotment of land to the petitioner at village Patti Shahpur as land in village Rahon was of the same rate as was claimed by the petitioner. The petitioner was, thus, allotted land to the extent of 3—11¼ standard acres in village Shahpur,—*vide* order dated April 2, 1971. Even though all these applications and

appeals took only a period of less than one year, it is thereafter that the woeful story of the petitioner started. After more than a year on March 2, 1972, a *suo motu* reference under Section 24 of the Act of 1954 was made by the Account Officer Rehabilitation Department to the Authorised Chief Settlement Commissioner. The case made out in the reference was that inasmuch as the petitioner had neither filed Mutalba Arazi nor had made any application before December 31, 1963 as required under Rule 67-A of the Act, he was not entitled to any allotment and the orders passed to the contrary were illegal and were required to be set aside. On various grounds, the petitioner challenged the aforesaid *suo motu* reference in this Court by way of Writ Petition No. 2510 of 1972. It is the very jurisdiction of carrying out a reference in the facts and circumstances that have been detailed above that was the sole grouse of the petitioner which was subject matter of adjudication in the aforesaid Writ Petition. The prayer in the writ was to issue a writ in the nature of *certiorari* quashing the impugned decisions and instructions contained in the Department circulars dated March 15, 1972, March 16, 1972 and March 29, 1972 as well as notice issued to the petitioner in *suo motu* reference which was desired to be struck down as illegal, void and without jurisdiction. The matter of the petitioner came up for hearing with a bunch of seven writ petitions and the judgment of this Court was recorded in Civil Writ Petition No. 1239 of 1972. The Writ Petitions were dismissed on January 15, 1973 refusing to set aside the *suo motu* reference dated March 2, 1972 made by the department in the case of petitioner. The *suo motu* reference, thus, came to be determined by the Chief Settlement Commissioner who,—*vide* his order dated September 8, 1976 decided the same in favour of the petitioner and declined the reference. The decision aforesaid, however, was not to the liking of the department and after about a period of two years, another *suo motu* reference was made by the Joint Secretary to Government Punjab in the Department of Rehabilitation to the Financial Commissioner (Revenue) who admittedly exercises the powers of the Central Government under Section 33 of the Act of 1954. The obvious prayer was for setting aside the order passed by the Chief Settlement Commissioner dated September 8, 1976. The fate of petitioner had yet another somersault when the Financial Commissioner,—*vide* order dated June 9, 1983 accepted the reference and cancelled all those orders that were passed in favour of the petitioner. It is this order, as indicated above, which has been challenged by the petitioner in this Court on variety of grounds inclusive of that the Financial Secretary had no jurisdiction to interfere with the orders which had since already been scrutinised and accepted as also that the claim of the petitioner was not covered by the provisions

of Rule 67-A of the Rules of 1956 as he was not a totally unsatisfied claimant because his allotment was never cancelled by the department as also that the whole case of the petitioner was decided upon satisfaction that the allotment made to the father of the petitioner had actually been cancelled as also that in the facts and circumstances of the present case, the judgment rendered by this Court in C.W.P. No. 2501 of 1972 could not possibly operate as *res judicata* between the parties.

(3) This petition has been opposed. In the written statement filed on behalf of respondents No. 1 and 2 by the Deputy Secretary Rehabilitation, decision of C.W.P. No. 2501 of 1972 is pressed into service to contend that the Financial Commissioner had no option but to accept the *suo motu* reference as the matter stood concluded against the petitioner by an *inter partes* judgment. While admitting the facts with regard to petitioner carrying out various applications and the appeals and the department carrying out *suo motu* reference, it is, however, pleaded that inasmuch as the petitioner had not filed any *Mutalba Irazi* nor was any application made by him before December 31, 1963 as required under Rule 67-A of the Rules of 1955, he was not entitled to restoration of allotment validly cancelled in view of clause 6(g) of the notification dated July 8, 1949. From the pleadings of the parties the two pertinent questions that require adjudication by this Court are as to whether judgment in C.W.P. No. 2501 of 1972 would operate as *res judicata* as also as to whether non filing of claim application before the limit prescribed under Rule 67-A, would be enough to negate entitlement of the petitioner.

(4) Mr. Gujral learned counsel appearing for the petitioner vehemently contends that neither Section 11 of the Code of Civil Procedure in strict sense nor the general principles of *res judicata* based upon maxim that no one can be vexed twice for the same cause of action would even be remotely attracted to the facts of the present case. Obviously, this stand of the learned counsel for the petitioner is opposed with equal vehemence by the State counsel who contends that *res judicata* is applicable for the reason that the parties were the same, the cause of action was the same and the subject matter of dispute was also the same. Before the matter is carried any further, it shall be useful to find out as to what exactly was the contention of petitioner in Civil Writ Petition No. 2501 of 1972 carried against the second *suo motu* reference, indication of which has been given above and as to what exactly was determined by this Court. A bunch of eight Writ Petitions came to be disposed of,—*vide* order dated January 15, 1973 by a Division Bench of this

Court and the case of petitioner in Civil Writ Petition No. 1239 of 1972 was that one Sham Dass was the father of petitioner Nos. 2 to 5 and husband of petitioner No. 1. On the partition of the country in the year 1947, Sham Dass migrated from West Pakistan where he had left some agricultural land. By section 4 of the East Punjab Refugees (Registration of Land Claims) Act, East Punjab Act No. 12 of 1948 which was printed at page 185 of the Land Re-settlement Manual by Tarlok Singh, refugees were asked to submit to the Registering Officer on the prescribed form and supported by an affidavit applications for the registration of their claims in respect of the lands abandoned by them or which they had been made to abandon. The basic idea of inviting said claims was to re-settle the displaced persons. On the basis of claims of such persons, after applying a graded cut, the displaced persons were allotted land by the Custodian in East Punjab and Pepsu. The claims so made were verified mainly on the basis of the copies of the *Jamabandis* received from Pakistan and failing that on the basis of the documentary evidence that was available with the claimants, or on the basis of oral evidence. "*Jamabandis*" from West Punjab were duly received but not from Sind, Bahawalpur, North West Frontier Provinces and Baluchistan. However, in the case of displaced persons whose claims could be verified from the copies of the "*Jamabandis*" received, they were given allotments on quasi-permanent basis. There were, however, cases where either because the area left by a displaced person was not much or for any other reason no claim was filed, it was decided, as a matter of policy, that if name of any person was found in the "*Jamabandis*" then the names of such persons would also be included amongst those who were entitled to receive allotment and they should be given the allotment that was due to them. Sham Dass had filed the claim under the Act of 1948 and he was allotted land measuring 3 standard acres 4½ units in village Gulhar, Tehsil Samana, District Patiala. He, however, did not take possession of the land so allotted to him till his death in 1968. The allotment made to him in village Gulhar was cancelled for his not taking possession as provided in the Rules and also as provided in clause 4(b) read with clause 6(g) of the Statement of Conditions of the allotment order. After the death of Sham Dass, the legal representatives made an application seeking an alternative allotment in view of the fact that the allotment made earlier was not available. This application was rejected. The petitioner of the said case filed an appeal and,—*vide* order dated May 10, 1971 the same was accepted. In the aforesaid order, it was specifically mentioned that the A.C.R. had cancelled the original allotment on August 28, 1951. The view taken by him was, however, that inasmuch as no notice was given to

the allottee before cancelling the allotment, the order of cancellation was bad and he, therefore, directed the authorities subordinate to him to make an alternative allotment according to the choice of the allottee. The petitioner wanted allotment in district Ludhiana whereas the authorities concerned wanted to confine the choice within the original district of allotment which was Patiala. The matter was taken before the Authorised Settlement Commissioner who interpreted his earlier order to the effect that the allotment according to the choice of the allottee would really mean to indicate that the choice was to be given within the original district of allotment. The petitioner went to the Chief Settlement Commissioner who,—*vide* his order dated October 20, 1971 modified the order of the Authorised Settlement Commissioner and directed that the choice need not be confined to Patiala district only. It is thereafter that the department made a reference to the Financial Commissioner who accepted the same and it is against that order that the aforesaid Writ Petition was filed in this Court. Four points as mentioned below were agitated before a Division Bench deciding the aforesaid case :—

(i) that it has not been established on the record that the original allotment had been cancelled by an authority competent to do so, because no order has been produced on the record ;

(ii) That, in any case, no notice having been given to the allottee before passing the order of cancellation, the allotment made to someone else of the land originally allotted to Sham Dass, was invalid ;

(iii) That by the cancellation of the original allotment, the right of Sham Dass, or his legal representatives after his death, to seek alternative allotment was not taken away and that it was not the intention of the Rules dealing with the question of cancellation of allotment for not taking possession, to deprive the allottee of his right to allotment in lieu of the land left by him ; and

(iv) that the Department is legally bound to give, at least, alternative allotment to the legal representatives and that the case of the petitioners (legal representatives) was not covered by rule 67-A of the Rules. While dealing with first two points, this Court after observing that the learned counsel did not press that the petitioners were

entitled to the original allotment and that it was clear from the reference made in Annexure 'A' to the order of the A.C.R. that the original allotment was cancelled on 28th August, 1951 and the fact that the land is no longer available and has been allotted to somebody else and that the further fact that for nearly 20 years, the original allottee or his legal representatives did not take any effective steps to have the alternative allotment clearly establish that the allotment was, in fact, cancelled and it was not necessary for such a cancellation that a prior notice should have been given. While dealing with the case of the petitioner which was Civil Writ Petition No. 2501 of 1972, it has been mentioned that in this case also, Daulat Ram father of the petitioner made no claim under the Act of 1948 but on the basis of the entries, he was allotted land measuring 3 standard acres 11¼ units in village Jandi, Tehsil and District Gurdaspur and that no steps were taken to get possession and the allotment was cancelled. If from the aforesaid observations it can be conclusively held that a finding with regard to cancellation of allotment was given by the Court on appraisal of evidence by considering the rival contentions of the parties, obviously the petitioner would be rightly confronted and would have insurmountable hurdle in his way and, therefore, the plea of *res judicata* raised by the respondents would succeed".

(5) After going through the records of the case and hearing the learned counsel for the parties, I am, however, of the view that even though this Court in the aforesaid Writ Petition filed by none other than the petitioner himself has observed that the allotment was cancelled yet the aforesaid finding was not arrived at by noticing the rival contentions of the parties. In fact, there was no occasion for the High Court to go through the conflicting pleas on the aforesaid issue which were not even before the Court. The only question that was required to be determined was as to whether on the facts as were pleaded in the *suo motu* reference, the same was competent or not. When the matter after the decision of Writ Petition came for adjudication before the Chief Settlement Commissioner, the question of cancellation or otherwise of allotment was actually gone into and a positive finding of fact was returned by the said authority that there were no cancellation orders on the file. The Re-settlement file and the connected record was scrutinised by the aforesaid authority and this is how the matter has been dealt with. "The Re-settlement file and the connected record was

got scanned from S.O. (L)-cum-M.O. and A.R. (L)-cum-M.O. They both reported that no notice of cancellation against the allotment of Shri Daulat Ram son of Nihalu figures, any where in the Rehabilitation File or in any connected record. On the contrary, the allotment made in this case finds support from the entry appearing at Serial No. 82 of the Index Panchayat Claims available in the R. file of village Jandi/690, Tehsil and District Gurdaspur. During the course of arguments, Superintendent (Legal) conceded that non-filing of the Mutalba Claim would not act as a bar in case application under Rule 67-A of the D.P. (C&R) Rules, 1955 was filed by the unsatisfied land allottee before December 31, 1963 and only those displaced persons came within the scope of Rule 67-A who were definitely unsatisfied land allottees before December 31, 1663." In order to satisfy myself with regard to findings of the Chief Settlement Commissioner as have been re-produced above, during the course of arguments, I required the respondents to produce the record. The case was adjourned to May 21, 1991,—*vide* order dated April 26, 1991 and instead of producing the record all that the learned counsel for the State did was to file an additional written statement by way of affidavit of Shri H. S. Sandhu, Deputy Secretary to Government of Punjab, Rehabilitation Department wherein it has been pleaded that the Resetlement file of village Jandi, Had Bast No. 690, Tehsil and District Gurdaspur has been examined wherein neither *Parcha* claim, *Parchi Numbran* Khasra showing the particulars of the evacuee land allotted to Shri Daulat Ram, son of Nihal Chand have been found nor any *Hukam Akhrdj* in respect of the said so called allotment is available. In fact it is pleaded that the aforesaid Re-settlement file is in dilapidated condition and the possibility of mis-placement or loss of such an order cancelling the allotment during the long period of about 43 years from the date of partition of the country cannot be ruled out but the fact remains that the Chief Settlement Commissioner at his own level while declining *suo motu* reference preferred by the department on scanning through the records had come to a positive finding that whereas documents with regard to allotment of land to Daulat Ram were available, cancellation of allotment was not there at all.

(6) From the resume of facts that have been given above in detail it would, thus, transpire that even though the Division Bench of this Court did record that allotment in favour of father of the petitioner was cancelled yet this question was neither raised nor was there any discussion nor a finding with regard to cancellation of allotment order was recorded after appreciating the rival contentions of the parties based on any material whatsoever. On the

other hand, the aforesaid observation was only on account of the second reference and order which in itself contained the factum of cancellation of order of allotment. It is in this background that a finding with regard to applicability of *res judicata* requires to be given. It is settled proposition of law that the observations made by the Court when there is neither any pleading nor evidence has to be termed off the mark. Such an observation would be unnecessary and would not operate as *res judicata*. As referred to above, the Division Bench of this Court proceeded on the facts as were available on the records stemming from the *suo motu* reference itself. The consistent plea of the petitioner that there was no order of cancellation available on the file was not gone into *vis-a-vis* the evidence. In fact there was no evidence before the Court but for the *suo motu* reference. The entries in the revenue record were not perused, ——the order of cancellation of allotment was not produced before the Court and, therefore, obviously not seen by the Court. The learned counsel appearing for that State, however, contends that even an observation sans reasoning on the basis of pleadings and evidence recorded by higher court would be binding upon the authorities and it shall not be open for the other side to contend that *res judicata* is not applicable. The order passed by the Secretary to Government, Rehabilitation Department setting aside the order passed by the Chief Settlement Commissioner has, thus, to be said to be the only course that was available with the Secretary. I, however, do not find any force in the afore-stated contention of the learned counsel. A conclusion without reference to relevant provisions of law is weaker than even casual observation. To have a binding effect, be it a question of law or fact, there has necessarily to be an issue pertinently raised and adjudicated upon. The Supreme Court in *State of U.P. and another* v. *M/s Synthetics and Chemicals Ltd. and another*" (1), has held that a conclusion without reference to relevant provision of law is weaker than even casual observation. When the questions which were neither in issue nor were raised nor was there any discussion in the judgment, the same would not have any binding effect. The point of *res judicata* thus has to be decided in favour of the petitioner and against the respondent-State.

(7) The only other question which needs determination is as to whether the existence of verified claim is a condition precedent to the satisfaction of a claim for allotment of claim regarding land left behind in Pakistan . A perusal of Rule 67-A of Rules of 1956

(1) Judgment Today 1991 (3) S.C. 268.

would show that it envisages submission of application for allotment in regard to unsatisfied verified claims. The expression "verified claim" has been defined in Section 2(e) of the Act which is as follows :—

> "2(e) "verified claim" means any claim registered under the Displaced Persons (Claims) Act, 1950 (XLV of 1950) in respect of which a final order has been passed under that Act or under the Displaced Persons (Claims) Supplementary Act, 1954 (12 of 1954) and includes any claim registered on or before the 31st day of May, 1953 under the East Punjab Refugees (Registration of Land) (Claims) Act, 1948 (East Punjab Act XII of 1948) or under the Patiala Refugees (Registration of Land) (Claims) Ordinance 2004 (Order 10 of 2004 Bk) and verified by any authority appointed for the purpose by the Government of Punjab, the Government of Patiala or the Government of Patiala and East Punjab States Union, as the case be, which has not been satisfied wholly or partially by the allotment of any evacuee land under the relevant notification specified in section 10 of this Act, but does not include :—
>
> (i) Any such claim registered in respect of property held in trust for a public purpose of a religious or charitable nature ;
>
> (ii) except in the case of a banking company for the purpose of sub-clause (i) of clause (b) of sub-section (3) of Section 6, namely :—
>
> (a) any such claim made by or on behalf of any company or association, whether incorporated or not ;
>
> (b) any such claim made by a mortgagee or other person holding a charge or lien on immovable property belonging to a displaced person in West Pakistan."

(8) Section 2(e) as has been re-produced above would show that there is provision in East Punjab Refugees (Registration of Land) (Claims)) Act, 1948 which envisages registration of claims regarding land. The definition further envisages that only such claims would be considered as verified as had been registered under the Act of 1953 i.e. East Punjab Refugees (Registration of Claims) Act on or before 31st day of May, 1953. It would, thus, be seen

that the last date for registration of claims under the Act of 1953 was 31st day of May 1953 whereas under the first proviso to Rule 67-A, an application for payment of compensation was to be made not later than 31st day of December, 1963 but the above-quoted Rule would only talk of existence of verified claim. In order to find out as to whether the existence of verified claim is a condition precedent to the satisfaction of a claim for allotment of claim regarding land left behind in Pakistan is the question that requires consideration. After going through the Scheme that was prepared and is referred to in the Land Resettlement Manual and other identical matters, I am of view that a displaced person is entitled to allotment of land abandoned by him in lieu of the land left behind in Pakistan on the basis of entries in *"Jamabandis"* received from Pakistan and the existence of verified claim is not a sine *qua* non for such allotment. Before the various enactments on the subject came into being, a Scheme was prepared which finds mention in the Land Re-settlement Manual. This Court in Civil Writ Petition No. 1412 of 1962 *"Shri Brij Lal and another* v. *The Chief Settlement Commissioner, Chandigarh* while dealing with identical question came to the following conclusion :—

> "The principal reason which has impelled the Chief Settlement Commissioner to resort to the course of cancellation is that no claim having been made by Tidan Devi or Brij Lal an order for allotment of land in their favour could not be sustained. In my judgment, the order of the Chief Settlement Commissioner is not in accordance with law besides being inequitable and unjust. As has been found by Shri Raja Lal, Managing Officer in his order of 17th of February, 1959, Suraj Bhan had filed the claim on behalf of all the co-sharers as a manager of the joint Hindu family. The evidence adduced by Suraj Bhan had been accepted by the Managing Officer and no member of the joint Hindu family had contested the authority of Suraj Bhan to submit the claim in respect of the total holding held by the successors of Lekh Ram. It is worthy of note that Mangal Chand did not file any separate claim though his share was mentioned in the claim itself. I do not see how the case of Tidan Devi and her son Brij Lal becomes different or distinguishable from that of Mangal Chand and it is hardly fair that when Mangal Chand is allowed to retain the benefit of allotment of land for which he never filed a separate claim Tidan Devi and her minor son Brij Lal should be denied this right. Mr. H. S. Wasu for the petitioner has

invited my attention, to many references in the Land Re-settlement Manual of Tarlok Singh in support of his contention that the submission of claim is not always an essential pre-requisite for allotment of agricultural land. In dealing with the subject of comparison between claims and oral verification at page 44 of this treatise, it is mentioned that "persons whose areas were traced as a result of entries in jamabandis, but who had not themselves filed claims were shown in the *fehrist assamiwar* at the end of the list prepared on the basis of the original claims and the verification, a reference being made in each case at the appropriate place in the alphabetically arranged *fehrist assamiwar*". Thus a list of claimants could and indeed had to include persons who may not have submitted their claims but the area abandoned by them had been shown in the jamabandis. Reference may also be made to paragraph 32 at page 52 of the Manual that "parcha claims prepared on the basis of jamabandi entries and un-accompanied by claims or entries in the *parcha tasdig* came to be known as 'E' category claims." It seems that when the revenue records came to be scrutinised and examined it became the duty of the authorities to prepare a list of claimants (fehrist assamiwar) although no claims had been made by them. In dealing with different classes of allotment it is envisaged that allotment is possible without an actual claim being made. Reference may be made to Chapter III of the Manual, at page 75, where it is stated that "where an entry in the jamabandi in favour of an individual was not supported by a claim and the claimant had not been actually linked up with heirs of other claimants, the allotment was shown in a reserve category." Thus, the right of allotment was dependent on entries in the jamabandi and not on the actual claims made. Such was stated to be the recommendation of the Committee as pointed out in the Land Re-settlement Manual at page 74 in these words :—

'On the recommendations of the Committee appointed by the Joint Rehabilitation Board, the Board approved that allotments of land to individuals should be made not on the basis of verified claims but on the basis of copies of jamabandis received from Pakistan. If any exceptions were to be made, the orders of the

Financial Commissioner, Rehabilitation, were to be obtained and the matter was to be brought to the notice of Government".

(9) It shall, thus, be made out that allotment of land to individuals could be made not on the basis of verified claims but also on the basis of copies of *Jamabandis* received from Pakistan. The perusal of record, in the present case, also reveals that the father of the petitioner was allotted land based upon entires in the *Jamabandis*. Inasmuch as the father of petitioner was allotted land, he could not be considered to be unsatisfied claimant and, therefore, provisions of Rule 67-A were not attracted in this case. Further, the allotment made in favour of father of the petitioner was not cancelled. It is only on account of applicability of *res judicata* and Rule 67-A that the Financial Commissioner had set aside the order passed by the Chief Settlement Commissioner and the decision on both the points having gone in favour of the petitioner, the obvious conclusion would be to set aside the order of Secretary to Government, Punjab Rehabilitation Department dated June 9, 1983 Annexure P6 and to restore the one passed by the Chief Settlement Commissioner dated September 8, 1976 Annexure P3.

(10) For the reasons stated above, this petition succeeds in the manner indicated above. In the peculiar facts of this case, however, there shall be no order as to costs.

J.S.T.

Before Hon'ble H. S. Bedi, J.

THE TRIBUNE TRUST, CHANDIGARH.—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 481 of 1991

January 13, 1992

Constitution of India, 1950—Art. 226/227—Industrial Disputes Act, 1947—S. 10—Reference—State Government initially declined reference—Whether State could then take complete somersault and refer dispute without notice to petitioner—Held that administrative action which tends to interfere with any body's right must also be preceded